



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2003

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2003-6498

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190329.

The City of El Paso Police Department (the "department") received three separate requests from one individual for case numbers 02-327284, 02-143055 and 02-111165. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are

separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007. Section 51.02(2)(A) of the Family Code defines “child” for purposes of section 58.007, in part, as a “person who is . . . ten years of age or older and under 17 years of age.”

After reviewing the submitted information, we find that the report for case number 02-327284, labeled as Exhibit B and the report for case number 02-143055, labeled as Exhibit D, involve allegations of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. Thus, these reports are subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, these reports are confidential in their entirety in accordance with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code. We note, however, that the report for case number 02-111165, labeled as Exhibit F, does not identify a juvenile suspect. Because a juvenile suspect is not identified, we find that this report is not made confidential under section 58.007 of the Family Code and may not be withheld on that basis.

However, you note the report for case number 02-111165, labeled as Exhibit F, contains a Texas driver’s license number that is confidential under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must withhold the Texas driver’s license number found in Exhibit F under section 552.130 of the Government Code.

Exhibit F also contains a social security number. We note that a social security number may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 at 2-4 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or

political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that the social security number in the file is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, before releasing the social security number, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

To summarize, the department must withhold in its entirety report number 02-327284, labeled as Exhibit B and report number 02-143055, labeled as Exhibit D under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must also withhold the driver's license number listed in report number 02-111165, labeled as Exhibit F, under section 552.130 of the Government Code. Finally, the department should determine whether or not the social security number was obtained pursuant to any provision of law enacted on or after October 1, 1990. If the social security number was obtained or maintained on or after October 1, 1990 pursuant to the federal Social Security Act, then the social security number must be withheld. The remaining information in Exhibit F must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 190329

Enc. Submitted documents

c: Mr. George Huerta
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(w/o enclosures)